ing appeals against conviction for murder and substituting therefor verdicts of guilty of culpable homicide, imposed sentences of imprisonment for life. Subject to the effect, if any, of section 39 of the Interpretation and General Clauses Act, our answer to the question posed is that the punishment for "imprisonment for life" referred to in section 304 is a sentence fixed by law.

Now what of section 39? It seems to have been placed in the Act out of an abundance of caution. Its use of the phrase "not exceeding" is mirrored but not, unfortunately, followed by the phrase, to which we have referred to above, "which may extend to". However, it does not, in our judgment, in the light of the phraseology used in section 304, the "General Exceptions", Part II of the Penal Code and the generality of the authorities cited on the meaning of the phrase "shall be punished with imprisonment for life" affect the fixed nature of that sentence other than that it would not permit any sentence greater than life – death – being imposed.

In the event the appeal is dismissed.

Appeal dismissed.

Solicitors: *Sandhu & Co.*

KOK SONG KONG v. B.S.P. CO. SDN. BHD.

[C.A. (Yang P., Silke & Godfrey JJ.) 27 May 1988]

[Bandar Seri Begawan – Civil Appeal No. 15 of 1987]

Civil Procedure – Limitation period – Date of lodging writ at registry was different from date of sealing writ – When was suit considered to be "instituted" – Whether claim was statute-barred – "Instituted" – Meaning of – Limitation Act (Cap. 14), ss. 3, 4 & 11.

The plaintiff appealed from an order of the High Court which decided that the plaintiff's claim for damages in a work accident was barred by limitation.

The plaintiff was injured in a work accident on 20 April 1981. Under section 3 of the Limitation Act (Cap. 14), the limitation period for the plaintiff's claim of damages was three years and as such, was to expire on 20 April 1984. The plaintiff tendered his writ at the High Court registry on 18 April 1984 and paid the proper fees. However, from the date on the writ, the writ appeared to have been sealed on 23 April 1984, which was two days after the last day of the limitation period. The defendant contended that under the Brunei High Court (Civil Procedure) Rules, the writ by which the action was commenced is to be deemed to have been issued when it was sealed.

Held, allowing the appeal: (1) the fact that the court cannot deem the writ to have been issued before 23 April 1984 does not compel it to hold that the suit was not "instituted" on 18 April 1984;

(2) the plaintiff lodged the correct papers for the institution of the suit and paid the proper fees on 18 April 1984 and, accordingly, the writ should have been sealed on, or as of, that date. There is no express provision to that effect in the rules but it is a matter of necessary implication. The suit was therefore instituted on 18 April 1984, before the expiry of the limitation period;

(3) the date on which a suit is instituted may be crucial to the rights of the parties. To have those rights depend on the whim of a court functionary cannot be right. Such a thing cannot be allowed as an admissible feature of a civilized system of jurisprudence.

Cases referred to:

(1) *Evans* v. *Jones* (1862) 2 Best & Smith 46; 121 E.R. 991 (folld).

(2) *Jumatsah bin Daud & Anor.* v. *Voon Kin Kuet & Anor.* [1981] 1 M.L.J. 254 (folld).

(3) *Aly* v. *Aly* (1984) 128 Sol. J. 64; The Times 27 December 1983 (folld).

COURT OF APPEAL.

Daljit S. Sandhu for the appellant.

D.G. Howell for the respondent.

Cur. Adv. Vult.

Godfrey J. (delivering the judgment of the court): In this action the plaintiff appeals from an order of Dato Sir Denys Roberts made on 7 August 1987 dismissing the action on a preliminary point, taken by the defendant, that the plaintiff's claim was barred by limitation.

The plaintiff's claim is a claim for damages for personal injuries suffered by him, in the course of his employment by the defendant, as a consequence of an accident which befell him on 20 April 1981.

Section 3 of the Limitation Act (Cap. 14) provides, so far as is material, as follows:

> "... every suit instituted after the period of limitation prescribed therefor ... if limitation has been set up as a defence, shall be dismissed."

The prescribed period of limitation for the type of claim with which we are concerned is three years from the date on which the injury is committed (see item 92 of the First Schedule to the Act) excluding the day on which the accident happened (see section 11). The limitation period therefore expired on 20 April 1984. This was a Friday, a day when the court was closed. The court reopened on Saturday, 21 April 1984. That day was accord-

ingly the last day on which the suit could have been instituted without risk of dismissal under section 3 (see section 4).

The facts are these. The plaintiff's legal representative attended at the registry of the High Court on Wednesday, 18 April 1984. The office was opened. He tendered the writ by which the plaintiff's suit was to be instituted, together with a praecipe (which was duly and correctly stamped). The papers were in order. The proper fees had been paid. The limitation period had not expired. It remained for the registry to deal with the matter. The proper entries had to be made in the cause book and the writ had to be sealed. These were matters entirely within the control of the registry and entirely outside the control of the plaintiff. In fact, from the date on it, the writ appears to have been sealed on 23 April 1984. It is this point on which the defendant fastens; for that date is two days after the last day, 21 April 1984, on which, as we have said, this suit could have been instituted without fear of dismissal on the ground of limitation.

The question, as we see it, is: Was this suit "instituted" before 21 April 1984 or after that date? We have no doubt of the answer. It is that the suit was "instituted" before 21 April 1984, namely, on 18 April 1984, when the correct papers for the institution of the suit were lodged by the plaintiff with the registry and the proper fees were paid. It is true, as Mr. Howell for the defendant pointed out, that under the Brunei High Court (Civil Procedure) Rules, the writ by which the action was commenced is to be deemed to have been issued when it was sealed. But does the fact that we cannot deem the writ to have been issued before 23 April 1984 compel us to hold that the suit was not "instituted" on 18 April 1984, so soon as the plaintiff had done all he could possibly do to institute it? In our judgment, it does not.

But it really does not matter. The plaintiff lodged the correct papers for the institution of the suit, and paid the proper fees, on 18 April 1984, and accordingly the writ should have been sealed on, or as of, that date. There is no express provision to that effect in the rules, but it is, in our judgment, a matter of necessary implication. As this case shows, the date on which a suit is instituted may be crucial to the rights of the parties. To have those rights depend on the whim of a court functionary cannot be right. Such a thing cannot be allowed as an admissible feature of a civilized system of jurisprudence. (We are glad to have been assured that the proper practice, of sealing the writ on or with the date on which the correct papers are lodged, is that now invariably followed.)

In the light of our conclusion that on the facts of the present case we are able to hold that the suit was instituted on 18 April 1984, it may strictly be unnecessary for us to say or do anything further; but out of caution we will direct that the writ be resealed *nunc pro tunc*, that is to say, with the date, 18 April 1984, which it ought to have borne in the first place. We do this in exercise of the inherent jurisdiction which the court has over its officers, not under any of the provisions of the rules. Where the rights of a party are threatened by an act or default of an officer of the court, the court clearly has such a power to correct the matter: see, for example, the interlocutory observation to that effect made by Crompton J. in *Evans* v. *Jones*.[1]

We are conscious that in arriving at these conclusions we are differing from Dato Sir Denys Roberts, and of course we do so with diffidence. But we are comforted by the knowledge that, as he said in his judgment, he arrived at his own conclusions "not without considerable regret"; and by the fact that the argument presented to him was somewhat different from that presented to us.

A number of authorities were cited to us. We do not think it necessary to review them, although two are worthy of mention. The first is *Jumatsah bin Daud & Anor.* v. *Voon Kin Kuet & Anor.*[2] This was a Kuching case, in all material respects, as it seems to us, indistinguishable from the present case (including the irregular practice of the registry) in which the judge of first instance in Kuching came to the same conclusions as those we have expressed above. This case was cited to Dato Sir Denys Roberts, and, with all respect to him, we do not find it easy to understand why he felt he could not follow it. The second case, which was not cited to Dato Sir Denys Roberts, is *Aly* v. *Aly*[3] in which Eveleigh L.J. observed that it did not make sense that a party who had done everything required of him by the rules should be penalized for something not done in time by the court. It would be surprising and harsh, he said, if a litigant who had done all that was required of him should be unable to obtain the court's assistance because the court itself had failed in some matter of procedure.

These observations are obviously correct. It is

fundamentally on these grounds that we allow this appeal.

Appeal allowed.

Solicitors: *Sandhu & Co.*

BASIR BIN BADONGGO & ORS. v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 26 May 1988]

[Bandar Seri Begawan – Criminal Appeal No. 4 of 1988]

Criminal Procedure – Sentencing – Whether sentences of 12 years' and 14 years' imprisonment for gang robbery are excessive – Penal Code, ss. 34, 39, 394, 456 & 457.

The appellants pleaded guilty to various charges of gang robbery, voluntarily causing hurt using a variety of deadly weapons and housebreaking by night. Their sentences were as follows: first and second appellant – 12 years' imprisonment for gang robbery and voluntarily causing hurt using deadly weapons; third appellant – 14 years' imprisonment for gang robbery and 4 years' imprisonment on each of the housebreaking charges, the sentences to run concurrently. They appealed against their sentences to the Court of Appeal.

Held, dismissing the appeal: the sentences imposed upon the appellants are entirely correct. If the appellants had pleaded not guilty, a sentence of 15 years' would have been appropriate for a gang robbery of this nature.

Cases referred to:

(1) *R.* v. *Burnett* [1988] Crim. L.R. 190 (distd).
(2) *Public Prosecutor* v. *Sawmill Ringgip* Criminal Case No. 2/1986 (folld).
(3) *Public Prosecutor* v. *Wan Razali* Criminal Case No. 1/1986 (folld).

COURT OF APPEAL.

Appellants in person.

Ivan Leong (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yang P. (delivering the judgment of the court): The three appellants pleaded guilty to a charge brought under section 391 read with section 394 and section 34 of the Brunei Penal Code, alleging that these appellants together with three other persons, namely, Rasid, Landing and Jong, in furtherance of their common intention, did commit a gang robbery at a house at Gadong and at the time of committing such gang robbery they did voluntarily cause hurt using a variety of deadly weapons.

The third appellant also pleaded to two further charges of housebreaking by night with intention to commit theft: section 457 of the Penal Code, and to one charge of housebreaking by night under section 456.

The first appellant and the second appellant were each sentenced to 12 years' imprisonment. The third appellant was sentenced to 14 years' imprisonment on the charge of gang robbery and to four years on each of the housebreaking charges, the sentences to run concurrently. They now appeal against their sentences.

The facts on the main charge of gang robbery are straightforward. On 1 September 1987, the second and third appellants together with their three confederates entered Brunei illegally from Labuan. Of those people, Rasid and Landing were apparently the leaders. On arrival, they were met by the first appellant who accommodated them in a partly constructed house where the first appellant was the building contractor. He was also to provide transport for them whilst they were in Brunei. Their plan was to burgle and rob a house selected by the first appellant and decided on by Rasid.

Rasid had with him a long knife, Landing an iron pipe and Jong a chisel. The second and third appellants did not carry weapons. On the night of 2 September last year, the first appellant drove these five men to a hillside. They waited there until 3.00 a.m. on 3 September when the five men went down the hill and went up to the targeted house, bringing with them a number of housebreaking tools in addition to the weapons already referred to.

Rasid and Jong entered the first floor of the house through a window and let the others in through the back door. They knocked on the door and were allowed in by the lady of the house. As soon as they saw the lady, they assaulted her and she immediately raised the alarm. A general melee then ensued between the lady, her husband and two sons on one side and the intruders on the other. During the struggle, one of the sons was pushed down the staircase and was knocked unconscious, remaining so for some hours until he came to in the hospital. This son also sustained quite serious injuries including lacerated wounds on his right and left elbows. All four members of the household sustain-